IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.Appeal No.523-MA of 2006
Date of Decision: 01-11-2006

Pardeep Kumar son of Prithipal resident of Gali Jandiwali, Namak Mandi, Amritsar

.....Appellant

VERSUS

1.Surinder Kumar
2.Rakesh Kumar sons of Des Raj, resident of Niyyan Katra, Dal Mandi, Amritsar

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Malkeet Singh, Advocate
for the appellant.

R S MADAN, J.

This Criminal Appeal under Section 378(4) of the Code of Criminal procedure is filed by the State of Punjab for grant of leave to appeal against the judgment of acquittal dated 11-7-2006 passed by the Judicial Magistrate Ist Class, Amritsar in a complaint case No.36 of 2005 under Sections 392/506/34 of the Indian Penal Code.

In brief the facts of the case are that accused are uncles of the complainant and wanted to get possession of shop situated in area of Dal

Mandi, illegally and forcibly, as said shop is in possession of father of the complainant. Accused-Rakesh Kumar has also filed a civil suit in this regard. He has filed a complaint with the Police to harass the complainant, his father and his brothers. The allegation in the said complaint was found false during investigation. It was on 21-8-1991, at about 7.00 A.M. when the complainant was proceeding towards Mandir Lali Shah situated in the area of Dal Mandi, Amritsar, the complainant was stopped by the present accused. Accused-Rakesh Kumar landed his revolver towards the chest of complainant and threatened him that he would be killed if he failed to vacate the shop in question. Accused-Surinder Kumar snatched wrist watch of HMT make and one gold ring on which letter 'P' was inscribed, from the complainant. Accused-Ramesh Kumar took out a sum of Rs.575/- from the pocket of shirt of complainant forcibly. They also threatened the accused with dire consequences. The aforesaid occurrence was witnessed by Vidang Bhushan son of Roshan Lal resident of Shakti Nagar, Amritsar and one Amar Singh son of Kishan Singh resident of Sattowali Gali, Katra Karam Singh, Amritsar. The complainant reported the matter to the police but no action was taken. Hence, the present complaint under Sections 392/506/34 of the Indian Penal Code was filed against the respondents.

In the preliminary evidence, the complainant appeared in the witness box as CW1 and examined Amar Singh as CW2. After the preliminary evidence was led by the complainant, the respondents were served to face trial for the commission of offence punishable under Sections 392/506/34 of the Indian Penal Code.

During pre-charge evidence, the complainant stepped

into the witness box as CW1 and examined Amar Singh as CW2 and closed the pre-charge evidence.

After going through the statement of the complainant, a prima facie case for the offence under Section 386 of the Indian Penal Code was made out against the accused and they were charge-sheeted thereunder. The aforesaid charges were read over and explained to the accused, to which they pleaded not guilty and claimed trial.

After the framing of the charge, CW1-complainant himself and CW2-Amar Singh appeared for further cross-examination and closed the evidence.

After the evidence was closed, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to them, to which they denied and pleaded false implication.

The accused proffered to lead evidence in defence but later on led no evidence in defence.

After carefully considering the entire evidence led by the complainant, the learned Magistrate did not find favour with the complainant's version and recorded the order of acquittal in favour of the respondents.

Aggrieved by the impugned order of acquittal recorded by the learned Magistrate, Amritsar , the complainant has knocked the door of this Court.

We have heard the learned counsel for the appellant and have carefully gone through the record of the case.

After evaluating the evidence led by the complainant, the learned Magistrate did not find favour with the statement of the complainant because he noticed discrepancy in the statement of the complainant and the testimony of Amar Singh-CW2. Both have given a different version in their examination-in-chief. It has been stated by the complainant that accused Surinder Kumar has taken out Rs.575/- from the pocket of the complainant whereas this fact has been attributed to Rakesh Kumar-accused in the complaint. Similarly, the testimony of CW2-Amar Singh qua the denomination of the currency was also held to be not admissible as this witness has learnt about the denomination of the currency notes from the complainant which amounts to hearsay evidence. It is further stated by CW2-Amar Singh in the cross-examination that he has cordial relations with the complainant for the last 16-17 years and his nephew, namely, Majja is an employee with the complainant for the last 10 years from where it is established that CW2-Amar Singh is an interesting witness and has reasons to depose in favour of the complainant. Amar Singh is also a witness in another complaint filed by the sister-in-law of the complainant, namely, Poonam against the present accused.

The learned Magistrate while highlighting the discrepancies pointed out in the testimonies of the complainant and CW2- Amar Singh, was of the view that the present complaint is not based on reliable and truthful evidence and the defence has been able to dis-credit the testimony of the witnesses of the complainant.

In this view of the matter, we do not find any infirmity in the order of acquittal recorded by the learned Judicial Magistrate Ist Class,

Amritsar. Hence leave to appeal is declined.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

November 01, 2006
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